IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4215 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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DHIRAJLAL MOHANLAL PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & ANR. - Respondent(s)

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Appearance :
Shri B.G. Patel for Petitioner(s).
Ms. Tanuja Kachchi, Assistant Government Pleader for Respondent No.1.
None for Respondent No.2 (District Development Officer).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/06/2007

ORAL JUDGMENT

The petitioner purchased certain land admeasuring 3 Acres 16 Gunthas of Survey No.191 from Maganlal Mavjibhai Patel under a registered sale deed dated 1st November, 1994. On 2nd November, 1994,

Mutation Entry No.1516 was effected in Village Form No.6 and thereafter, on 3rd December, 1994, the Mamlatdar, Morbi certified the aforesaid mutation entry. Certain correspondence was exchanged between the concerned authorities, which ultimately led to a report by the Taluka Development Officer, Morbi in favour of the petitioner. On 14th February, 1995, the District Development Officer, i. e. respondent No.2, granted permission for non-agricultural use. The petitioner thereafter paid the conversion charges, got the maps and plans sanctioned and started erecting his industry. On 5th May, 1997, the Architect and Engineer issued certificates certifying the investments made by the petitioner. On 3rd/4th March, 1997, the Deputy Secretary, Revenue Department, issued a notice to the petitioner to show cause as to why the permission dated 14th February, 1995 granted by the District Development Officer be not cancelled. On 20th/21st March, 1997, the petitioner submitted his reply. However, on 17th April, 1997, the respondent-State, through the concerned Deputy Secretary, cancelled the permission dated 14th February, 1995. The petitioner, being aggrieved by the order dated 17th April, 1997, is now before this Court.

2. Shri B.G. Patel, learned Counsel for the petitioner, submits that the petitioner was not an isolated case of grant of conversion permission, but, he was one from the larger flock. According to him, number of industries have been raised and development in the

agricultural zone has taken place, but, no action has been taken against other industries and for the reasons best known to the authorities, the petitioner has been singled out. His submission is that the State Government is well aware of the fact that a particular area is being developed as industrial zone, but, the State Government has not taken any action against anybody. His further submission is that the revisional powers in a case like the present should have been exercised within a reasonable time. Unfortunately, less realising that the permission was accorded on 14th February, 1995, the Deputy Secretary wanted to exercise the powers after more than two years. His submission is that the order dated 17th April, 1997 deserves to be quashed.

It would be necessary to note that in a petition of the year 1997, despite certain observations made by this Court, the State Government has not come out of its slumber and has not filed its reply.

3. Ms. Kachchhi, learned Assistant Government Pleader, submits that the orders passed by the State Government are justified because such permission could not have been granted.

4. I will be justified in quoting the order dated 30th July, 1997 passed by Honourable Mr. Justice H. L. Gokhale (as he then was) *in*

extenso:

> *"Heard Mr Arvind Patel for the petitioner and Mr Apoorva Vyas, AGP, for respondents. The petitioner is owner of certain lands situated at Mahendranagar near Morvi. He applied for converting use of those lands to non-agricultural purposes. After corresponding with the relevant officers of the State Government including Executive Engineer - Irrigation and Executive Engineer Roads and Building, from 14th February 1994 and after considering all relevant factors, the District Development Officer granted N.A. permission on 14th February 1995. Mr Patel appearing for the petitioner defends this order and justifies the grant thereof. This order was sought to be revised by the State Government and a show-cause notice was given to the petitioner on 3rd March 1997 which is two years subsequent to the grant of NA permission. The petitioner gave a reply and after hearing him the Revenue Secretary has cancelled the NA permission by his order dated 4th April 1997.*
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> *2 Mr Vyas learned AGP drew my attention to the fact that the Town Planning Officer of Rajkot had objected to this conversion by his letter dated 29th November 1994 on the ground that the land was in agricultural zone and therefore the NA conversion ought not to have been granted on 14th February 1995 and hence he justifies the finding of respondent no.3-Revenue Secretary.*
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> *3 As against that, Mr Patel points out that it is not*

merely the petitioner's unit alone but a large number of industries have come up in the adjoining area. He has drawn my attention to a number of photographs of the industries on the adjoining plots. A map has also been annexed at page 49 of the petition which shows that number of industries have come up on the adjoining plots.

4 It is in these circumstances that when the matter came up for hearing before me on 17th June 1997, that I issued a notice to the respondents without granting any interim relief to the petitioners and asking the respondents to explain that if they approve of the impugned order of the Secretary, what action is being taken against the District Development Officer who issued the N.A. permission on 14th February 1995 and also whether any action is being taken against other industries which have been put up in the agricultural zone. The matter came to be adjourned from time to time thereafter but respondents have not filed any reply.

5 As against that, Mr Patel has amended the petition and placed on record at page 55 of the petition another permission dated 18th November 1995 granted to another industry. That order specifically states in paragraph 12 thereof that in the adjoining area number of industries have come up. Mr Patel also relies upon the judgement of Ahmadi, J. (as he then was in this Court) reported in 1987 (2) GLR page 971 which lays down that while exercising revision under section 211 of the Bombay Land Revenue Code, the power must be exercised at the earliest. In the instant case, the notice was

given more than two years after the permission was granted. The petitioner has put up industry in this place after paying the conversion charges and equities have changed in favour of the petitioner. In the circumstances, the petition deserves to be admitted. Rule. Interim relief in terms of para 15(B) till the disposal of the petition."

From this order, it would clearly appear that the High Court issued a notice to show cause to the State Government, but, unfortunately, the State Government did not file any reply. The State Government did not tell the High Court that if the order of the Secretary, is taken to be right, what action had been taken against the District Development Officer, who had issued permission on 14th February, 1995. The State also did not inform this Court as to what action was being taken or has been taken against other industries put up in the agricultural zone. The Court also recorded that the District Development Officer had again granted permission on 18th November, 1995 for development of the industry, observing that in the adjoining area, number of industries have come. This Court also observed that the petitioner had put up industry on the land in dispute after paying the conversion charges and equities had changed in favour of the petitioner. The Court granted interim relief and admitted the petition on 30th July, 1997, but, unfortunately, even after a lapse of ten years, the State has not come out of its hibernations and has not cared to read the

observations made by this Court in the order dated 30th July, 1997 and the Secretary, so also other authorities, are not ready and willing to tell this Court that what action has been taken against the District Development Officer and what action has been taken against other industries. In absence of positive reply from the side of the State Government, this Court would be justified in presuming that the Government is not ready to bring out the correct facts before this Court and are trying to justify the order on one hand and are not ready and willing to take action against the concerned District Development Officer or other industries on the other hand. In a judgement reported in ***1987 (2) G.L.R. 971***, this Court has observed that the powers under Section 211 of the Bombay Land Revenue Code should be exercised at the earliest. When such powers are not exercised at their earliest and equities start changing, then, at a later stage, the State Government and its authorities would not be allowed to say that the original action was wrong, therefore, the parties should be sent back to their original position. In the present matter, undisputedly, an industry has come up and the petitioner has spent a good fortune.

5. Taking into consideration that the order passed by the learned Revisional Authority does not take into consideration all these aspects and the State is not ready and willing to observe the order dated

30th July, 1997 passed by this Court, I further hold that the order passed by the concerned Deputy Secretary being the result of non-application of mind and non-consideration of the judicial orders passed by this Court regarding exercise of the revisional powers within a reasonable time, the order cannot be allowed to stand. The order dated 17th April, 1997 passed by respondent No.1 cancelling the non-agricultural permission is hereby quashed and set aside. The matter is remanded back to the concerned Secretary to make an inquiry into the allegations of the petitioner and require the State Government and its Officers/Authorities to submit each and every detail, which was called by this Court in its order dated 30th July, 1997. The concerned Secretary shall also take into consideration the judgement of this Court reported in ***1987 (2) G.L.R. 971*** and shall also consider that whether in the given set of circumstances and the fact that other industries have also come up, would it be justified and prudent to exercise the revisional powers.

6. This Writ Application deserves to and is allowed to the extent indicated above. The parties present in the Court shall appear before the concerned Secretary on 25th July, 2007. It shall be the duty of the parties to file a copy of this order before the concerned Secretary to enable him to know as to what he is required to do.

7. Let copies of this order and the order dated 30th July, 1997 be sent from the Court's side to the concerned Secretary so that disposal of the matter is not unnecessarily delayed.

Rule is made absolute to the extent indicated above. No costs.

[R.S.Garg, J.]

*kamlesh**